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1068

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

PETITION FOR CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

CHARLES E. BURNS, JR., et al
Petitioners

vs.

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA
Defendants

} RECORD NO.

PETITION FOR CERTIORARI

1. The Virginia Supreme Court of Appeals at Richmond has refused plaintiffs a writ of error to a judgment rendered by the Circuit Court of Fairfax County on May 14, 1969, sustaining Defendants' demurrer to a petition for a writ of mandamus filed by Plaintiffs to compel the Fairfax County Board of Supervisors, its agents, employees, and any one acting under its direction to tax complainants' land on its present use value, and refund or allow credit for the taxes in excess thereof previously levied.

2. A copy of the judgment of the Virginia Supreme Court of Appeals dated October 14, 1969, is appended hereto.

3. It is believed that the Fourteenth Amendment to the United States Constitution confers jurisdiction on this court to review the judgment in question by writ of certiorari. The Fourteenth Amendment provides in relevant part that "No State shall . . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws."

4. The assessed values of Plaintiffs' individual tracts of farm land on which they are residing were arbitrarily increased in 1966 and 1967 to more than four times what they had been the year before for no legal reasons.

5. Mandamus action was brought under Section 17-123 of the Code of Virginia 1950, as amended, which reads in relevant part as follows: "The circuit courts shall have jurisdiction . . . . to issue writs of mandamus in all matters or proceedings arising from or pertaining to the action of boards of supervisors or other governing bodies of the several counties for which such courts are respectively held or in other cases in which it may be necessary to prevent the failure of justice and in which mandamus may issue according to the principles of common law."

6. It is well settled that mandamus will not lie to control or review the acts of public officers in matters in which they have been vested with discretion "in the absence of arbitrary action, or refusal to exercise their discretion . . . ." (Andrews vs Shepherd, 201 Va. 412, 111 S.E. 2d at 282). The action of Defendants in Plaintiffs' case has been arbitrary and an exception to the rule.

7. The borrowing of money by Fairfax County is tied to assessed valuations of real estate and the assessors are being pushed into an improper policy-making role with regard to local government financing. Assessed values are increased instead of the rate which is a percentage of assessed value and is equal on all real estate at the same time. Prior to any increase in the tax rate in the County a public hearing is required and citizens are given an opportunity to appear before the local governing body and be heard on the subject of such increase. (Sec. 58-846.1 (1968 Supp.)) This is not done when assessed values are increased.

8. The most important question presented for review is the interpretation of "fair market value", a nebulous, vague, confused and fluid term meaning many things to many people. Does it mean "fair market value" for a present bona fide use?

. . . or for a future use?

9. In a case decided by the Supreme Court of Florida on the assessment of farmland the court stated: "Assessed valuations of land based on estimates of its highest and best potential, as distinguished from present bona fide use, are bound to be largely conjectural; and when an assessor, contrary to legislative intent and direction determines that land despite its present value has a truly higher present value because of its potential for some other "higher" purpose, he indulges in unwarranted speculation and does violence to the constitutional and statutory objective of just valaution. The assessor, like the courts, should operate within the record and not de-hors it." (Lanier v. Overstreet 175 So 2d 521-1965)

10. Our petition for a writ of certiorari is filed in order that justice may be done.

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday *the* 14th *day of* October, 1969.

The petition of Charles E. Burns, Jr., Louis V. Facchina, Russell F. Hogeland, James A. S. Roy, Mrs. Ethel M. S. Roy, Ernest P. Finger, J. B. Thompson, M. V. Leigh, H. Houston DeRamus, Grace L. Turner (Mrs. Mark, Sr.), Edmond E. Thompson, Mrs. Grace T. Sheets, Henry Y. Gouldman, Mrs. May L. Gouldman, Edward A. Wiesman and Nicholas Yaworski for a writ of error to a judgment rendered by the Circuit Court of Fairfax County on the 14th day of May, 1969, in a certain proceeding then therein depending, wherein the said petitioners were plaintiffs and the Board of Supervisors of Fairfax County was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgment complained of, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

Howard G. Turner, Clerk

By

R. P. Henderson
Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of the foregoing Petition for Certiorari, postage prepaid, this 12th day of January, 1970, to Mr. Donald C. Stevens, County Attorney, Counsel for Defendants, 4100 Chain Bridge Road, Fairfax, Virginia, 22030.

Mrs/ Bertie E Tubaugh

Bertie E. Tubaugh

TABLE OF CASES AND AUTHORITIES

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IN

The Supreme Court Of The United States

AT WASHINGTON, D. C.

October Term, 1969

Record Number 1063

CHARLES E. BURNS, JR., et Al.,
Petitioners,

v.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
Respondent.

BRIEF IN OPPOSITION TO THE *GRANTING OF A WRIT OF CERTIORARI*

JURISDICTION

Petitioners rely upon the Fourteenth Amendment to the Constitution of the United States for jurisdiction in this Court. Respondent respectfully submits:

a. That Rule 21 of the Rules of this Court have not been complied with, for the reason that Petitioners have not submitted a transcript of the Record in the courts below.

b. That no substantial Federal question has been raised in the courts below, or in the Petition for a Writ of Certiorari filed herein. *Cardinale, Jr.* v. *State of Louisiana*, ... U. S. ....., 22 Law Ed.2d 398, 89 Sup. Ct. ..... (1969), wherein this Court spoke as follows:

> "And in a Federal system it is important that State Court be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statute may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adquate state ground." (22 Law. Ed.2d, at 400.)

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION OF VIRGINIA (1902), as amended:

Article XIII, § 169—Except as hereafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. So long as the State shall levy upon any public service corporation, other than a railway or a canal corporation, a State franchise, license, or other tax, based upon or measured by its gross receipts, or gross earnings, or any part thereof, its real estate and tangible personal property shall be assessed by the State Corporation Commission, or other central State agency, in the manner prescribed by law. The General Assembly may allow a lower rate of taxation to be imposed for a period of years by a city or town upon land added to its corporate limits, than is imposed on similar property within its limits at the time such land is added. The General Assembly may define as a separate subject of taxation household goods and personal effects and may allow the governing bodies of counties, cities, and towns to exempt or partially exempt such property from taxation.

* * * *

Title 15.1 (Counties, Cities and Towns), Chapter 13 (County Executive and County Manager Forms of Government), Article 11 (County Executive Form), Section 15.1-612. Department of Assessments—

The Department of Assessments, if and when established, shall be headed by a Commissioner of the Revenue or a Supervisor of Assessments, who shall exercise all powers conferred and perform all the duties imposed by para. (c) and (d) of § 15.1-605 upon the Director of Finance.

In addition to the powers and duties hereinabove conferred, the governing body of any county which has provided for a Department of Assessments headed by a Supervisor of Assessments may, in lieu of the method now prescribed by law, provide for the annual assessment and equalization of assessments of real estate by such department. All real estate shall thereafter be assessed as of January 1st of each year. Any person aggrieved by any such assessment may apply for relief to the Circuit Court of the County as provided by law. The provisions of this section shall not, however, apply to any real estate assessable under the law by the State Corporation Commission.

* * * *

Title 58 (Taxation), Chapter 22 (Erroneous Assessments), Article 11 (Local Levies), Section 58-1145. Application to Court to Correct Erroneous Assessments of Local Levies Generally—

Any person assessed with county or city levies or other local taxes on real estate, aggrieved by any such assessment, may, unless otherwise specially provided by law, within two years from the 31st day of December of the year in which any such assessment is made, and any person assessed with local levies on personal property or a local license tax, aggrieved thereby, may,